

MINUTES OF THE SOLID WASTE MANAGEMENT BOARD MEETING

Indiana Government Center South
402 West Washington Street
Conference Center Room A – 1:30 p.m.
Indianapolis, Indiana
November 21, 2006

The meeting was called to order by Rick Dyar, Acting Chairperson, at 1:33 p.m. Those present for all or part of the meeting were:

- Mr. Mark Davis
- Mr. Chuck Himes
- Dr. Lenore Tedesco
- Mr. Jason Ward
- Dr. Stephen Wintermeyer
- Mr. Howard Cundiff (Proxy, State Department of Health)
- Mr. Chad Frahm (Proxy, Lieutenant Governor's Office)
- Mr. Tom Hohman (Proxy, Department of Natural Resources)
- Ms. Pamela Fisher (Proxy, Indiana Economic Development Corporation)
- Ms. Deborah Albright, Board Counsel

A quorum was present.

In addition, the following Indiana Department of Environmental Management (IDEM) staff members were present for all or part of the meeting:

- Mr. Tom Easterly, Commissioner
- Mr. Bruce Palin, Assistant Commissioner, Office of Land Quality
- Mr. Mike Dalton, Chief, Rules, Planning and Outreach Section
- Mr. Steve Mojonier, Rules, Planning and Outreach Section
- Ms. Lynn West, Rules, Planning and Outreach Section
- Ms. Kiran Verma, Rules, Planning and Outreach Section
- Ms. Marjorie Samuel, Rules, Planning and Outreach Section

1. APPROVAL OF MINUTES

Acting Chairperson Dyar asked for additions or corrections to the minutes of the Solid Waste Management Board meeting of September 19, 2006. Mr. Chuck Himes asked that the minutes of September 19, 2006, page 5, item C under Mr. Ferris's presentation be amended to delete the word "substantial" and read to as follows: "intermediate processing steps before being sent for manufacturing". Acting Chairperson Dyar asked for a motion to amend the minutes. Mr. Himes so moved and Dr. Lenore Tedesco seconded. The motion passed unanimously. Acting Chairperson Dyar asked for a motion to approve the minutes as amended. Mr. Himes so moved and Mr. Tom Hohman seconded. The motion passed unanimously.

2. IDEM REPORTS

Acting Chairperson Dyar then invited Mr. Bruce Palin, Assistant Commissioner, to address the Board. Mr. Palin deferred to Lynn West to present a rules update.

Ms. West distributed the rules project list and mentioned the addition of #06-501, concerning concentrated animal feeding operations for consideration by the Water Pollution Control Board.

Ms. West also reviewed changes in the publication of documents in the Indiana Register. She said that the Indiana Register would only be published on line and that it will be published daily, with the

majority of rules published weekly on Wednesday after 3:45 p.m. Ms. West also explained the new “Document Identification Number” and how to locate rules in the on-line Indiana Register. (Please see pages 5 through 8 of the official transcript of this meeting for a verbatim account of Ms. West’s report.)

Acting Chairperson Dyar then asked Ms. Deborah Albright to review the procedures for making motions. A laminated check list to assist Board members with motions will be made available for board members at each meeting to assist with board deliberations and actions. (Please see pages 9 through 10 of the official transcript of this meeting for a verbatim account of Ms. Albright’s presentation.)

3. Acting Chairperson Dyar announced the following rulemaking actions:

- A. Final Adoption of LSA #05-297, Amendments to Rules Concerning Solid Waste Processing Facilities at 329 IAC 11. The proposed rule was published May 1, 2006, in the Indiana Register at 29 IR 2639. The hearing was opened and continued from the July 18, 2006 Solid Waste Management Board meeting to the September 19, 2006 Solid Waste Management Board meeting. This hearing was recessed and was reconvened at this Board meeting. The rule was published as a draft rule in the Indiana Register on May 1, 2006 at 329 IR 2711.
- B. Final Adoption of LSA #06-182, Amendments to Rules at 329 IAC 9 Concerning Additional Measures to Protect Ground Water. The hearing was noticed in the Indiana Register on November 15, 2006, and can be found at Document Identification Number 20061115-IR-329060182PHA. The rule was published as a proposed rule in the Indiana Register on November 15, 2006, and can be found at Document Identification Number 20061115-IR-329060182PRA. This hearing will be continued to the January 16, 2007 Solid Waste Management Board meeting at the Indiana Government Center South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana at 1:30 p.m.
- C. Final Adoption of LSA #05-168, New Rules, Amendments to Rules, and Readoption of Rules Concerning Waste Tire Management at 329 IAC 15. The proposed rule was noticed in the Indiana Register on October 18, 2006, and can be found at Document Identification Number 20061018-IR-329050168PRA.
- D. Preliminary Adoption of LSA #05-250, New Rules at 329 IAC 11.5, Concerning Mercury Switches. The rule was published as a draft rule in the Indiana Register on August 9, 2006, and can be found at Document Identification Number 20060809-IR-329050250SNA. The hearing was noticed in the Indiana Register on August 29, 2006, and can be found at Document Identification Number 20060809-IR-329050250PHA.

Acting Chairperson Dyar announced that LSA #05-168, New Rules, Amendments to Rules, and Readoption of Rules Concerning Waste Tire Management at 329 IAC 15, would be considered first due to time restrictions and logistics regarding readoption. Acting Chairperson Dyar said that the stated rules were included in a Board packet for this meeting and are available for public inspection in the Indiana Department of Environmental Management File Room, located on the 12th floor of the Indiana Government Center North, Monday through Friday, between the hours of 8:30 a.m. and 4:30 p.m. Instructions were given to the public regarding offering oral statements and comments to the Board. The court reporter was affirmed.

4. FINAL ADOPTION NEW RULES, AMENDMENTS TO RULES AND READOPTION OF RULES CONCERNING WASTE TIRE MANAGEMENT AT 329 IAC 15

Acting Chairperson Dyar announced the hearing to consider final adoption of #05-168, New Rules, Amendments to Rules and Readoption of Rules Concerning Waste Tire Management at 329 IAC 15. He introduced Exhibit A, the proposed rule as preliminarily adopted and Exhibit A1 IDEM’s suggested changes, into the record of the hearing. He then asked Mr. Steve Mojonier to address the Board.

Mr. Mojonnier briefly reviewed the clarifications and corrections that had been made to the rule and also explained that the rule had to be readopted before it expires in January. (Please see Pages 14 thru 15 of the official transcript of this meeting for a verbatim account of Mr. Mojonnier's presentation.) Acting chairperson Dyar asked for questions from the Board. There were none. There was also no public comment so the hearing was concluded. Acting Chairperson Dyar asked if there was any Board discussion. There was no Board discussion. Acting Chairperson Dyar asked for a motion to adopt Exhibit A1, IDEM's Suggested Changes. Mr. Mark Davis so moved and Mr. Himes seconded. The motion passed unanimously. Acting Chairperson Dyar then asked for a motion to adopt the final rule, as amended. Mr. Jason Ward so moved and Mr. Howard Cundiff seconded. The motion passed unanimously.

5. PRELIMINARY ADOPTION AMENDMENTS TO RULES CONCERNING SOLID WASTE PROCESSING FACILITIES AT 329 IAC 11

Acting Chairperson Dyar announced the reconvening of the hearing to consider #05-297, Amendments to Rules Concerning Solid Waste Processing Facilities at 329 IAC 11 for preliminary adoption. He introduced Exhibit B, the draft rule into the record of the hearing. Exhibit B replaced all other exhibits regarding the rule. He then asked Mr. Palin to comment on the rule.

Mr. Palin first discussed the changes that had been made to the rule to accommodate public comment at the previous Board meeting. He also emphasized that this rule was at the preliminary adoption stage and that if there were any suggestions, ideas, or clarifications, that input would certainly be open for discussion. He also mentioned that a requirement under 329 IAC 11-13-3, Signs, Section 3 (b)(1) regarding posting times for the presence of a facility employee was removed in response to public comment that such posting was redundant.

Mr. Palin revisited the issue of who would make the determination on the local or regional need. He said that after the last meeting, he had met with the Lake County Solid Waste Management District representatives, but they were unable to arrive at any agreement. He reiterated the District position "the District believes that existing statutory language gives them the authority to make a needs determination that impacts the permit decision made by the Agency, and the Agency ... interpreted the language to mean that IDEM is the one that makes the determination of need..." A copy of the statute for the Board's reference had been distributed prior to the start of the meeting. Mr. Palin reviewed the many factors that going into the permitting decisions and said that local interests are part of that decision and are not ignored. (Please see pages 18 through 23 of the official transcript of this meeting for a verbatim account of Mr. Palin's remarks.)

There were no comments from the Board, so Acting Chairperson Dyar asked for public comment.

The following individuals offered comment on the rule:

- a. Mr. Lance Hodge, Association of Indiana Solid Waste Management Districts, Inc., Valparaiso, Indiana;
- b. Mr. Clifford Duggan, Lake County Solid Waste Management District, Merrillville Indiana;
- c. Mr. Steve Christman, Northeast Solid Waste Management District, Ashley, Indiana;
- d. Mr. David Bottorff, Association of Indiana Counties, Indianapolis, Indiana;
- e. Mr. Jeff Langbehn, Lake County Solid Waste Management District, Merrillville, Indiana.

Mr. Hodge, Association of Indiana Solid Waste Management Districts, said that after the last meeting, Mr. Duggan from the Lake County Solid Waste Management District met with the Association's Board of Directors to offer his interpretation of the statute regarding determination of need and the Board approved Mr. Duggan's interpretation. Mr. Hodge said that he was testifying to request that there should be no language change in the rule to decrease local authority. (Please see pages 24 and 25 of the official transcript of this meeting for a verbatim account of Mr. Hodge's comments.)

Mr. Duggan, the attorney for the Lake County Solid Waste Management, spoke next. He said that he felt local authority was, indeed, being compromised in the rule language. He said that changes to district authority should be approached through the Legislature and not through the rulemaking process. Mr. Duggan also referred to the three handouts given to the Board at the last meeting to support his position. He summarized again that IDEM does have permit authority and determination of need is one of the deciding factors. However, districts have the responsibility to make that determination of need for solid waste facilities. He said that the district position is also supported by the Indiana Association of Cities and Towns, Association of Indiana Counties and the Association of Solid Waste Districts. He concluded by addressing the Board as follows: "We would respectfully request that you do not include Section 13's proposed language as a part of your approval, and that you again direct both IDEM and the districts to sit down and enter into meaningful discussions clarifying this issue." (Please see pages 25 through 28 of the official transcript of this meeting for a verbatim account of Mr. Duggan's comments.)

Mr. Steve Christman, Northeast Solid Waste Management District, spoke next. He also expressed opposition to sections of the rule that were viewed as diminishing district input regarding determination of need. He mentioned that districts are able to more quickly react and study new industry technologies. He also said that his local Board of Directors had expressed discomfort with the lack of local control. Mr. Christman said that recent discussions about zoning modifications were made more difficult because their constituents would rather talk with the local board regarding solid waste management decisions. (Please see pages 28 through 31 of the official transcript of this meeting for a verbatim account of Mr. Christman's remarks.)

Mr. David Bottorff, Association of Indiana Counties, spoke next. He also stated concern that "...the IDEM Commissioner would make the final determination on the need for a regional facility and not the local elected officials who serve on solid waste district boards." He asked for a change as follows: Section 13, paragraph c, "If the Solid Waste District Management Board determines that there is a local need". (Please see pages 31 and 32 of the official transcript of this meeting for a verbatim account of Mr. Bottorff's remarks.)

Mr. Jeff Langbehn, Lake County Solid Waste Management District, spoke next. He said that the largest solid waste district in the state, Lake County, supports the position that the local elected officials should determine the need and that IDEM makes permitting decisions. Mr. Langbehn said that regarding the "clause of need"; the Solid Waste Management Board should not make a decision, but "remand it back to the Legislature." (Please see pages 32 through 34 of the official transcript of this meeting for a verbatim account of Mr. Langbehn's remarks.)

Acting Chairperson Dyar asked if there were other commentors on the rule. There being none, the hearing was concluded.

Considerable Board discussion ensued. A number of points were discussed:

- a. How would the Supreme Court decision influence the agency rulemaking?
- b. Discussion of rule language and the requirements of district state plans. District plans don't indicate the lack of need (negative finding), only include an actual need for a facility.
- c. If there is no need, there would not be mention of it. Does this alter the decision of determination of need when considering a permit?
- d. Discussion of changes that can be made at preliminary adoption that might be more reflective of district concerns for protecting their local right of determination of need.
- e. Further clarification that evaluation of need for a facility is one factor among others that IDEM considers when granting a permit. Legislative change specifically exempts transfer stations from determination of need.

Mr. Mark Davis made a motion for an amendment as follows: "...we preliminarily adopt the rule, except that under Section 13, Section 5(b)(1)(C)ii -- that specific one that begins, 'For facilities proposed in an area', that we keep that language in original language that we do not amend that

language. That we also, for section 5(b)(1)(C)ii, that section is the one that begins, 'For facilities proposed is areas', that we keep the language the same. And lastly, for Section 5(C), the one that begins 'The commissioner shall' – that that also keep the original language." (Please see pages 35 through 46 of the official transcript of this meeting for a verbatim account of this discussion.)

Acting Chairperson Dyar called for a vote just on the proposed amendment to the rule offered by Mr. Davis; to amend the rule that would later be voted on for preliminarily adopted. Mr. Himes seconded. The motion failed to pass. The roll call vote was as follows:

Chad Frahm	No	Mr. Chuck Himes	Yes
Tom Hohman	No	Mr. Jason Ward	Yes
Howard Cundiff	No	Mr. Mark Davis	Yes
Pam Fisher	No	Dr. Lenore Tedesco	Yes
Rick Dyar	No	Dr. Stephen Wintermeyer	Yes

Acting Chairperson Dyar called for a motion to preliminarily adopt the proposed rule without the amendment just considered. Mr. Tom Hohman so moved and Mr. Ward seconded. The motion passed. The roll call vote was as follows:

Chad Frahm	Yes	Mr. Chuck Himes	No
Tom Hohman	Yes	Mr. Jason Ward	Yes
Howard Cundiff	Yes	Mr. Mark Davis	No
Pam Fisher	Yes	Dr. Lenore Tedesco	No
Rick Dyar	Yes	Dr. Stephen Wintermeyer	Yes

6. FINAL ADOPTION AMENDMENTS TO RULES At 329 IAC 9 CONCERNING ADDITIONAL MEASURES TO PROTECT GROUND WATER

Acting Chairperson Dyar announced the public hearing to consider final adoption of #06-182, Amendments to Rules at 329 IAC 9 Concerning Additional Measures to Protect Ground Water. He introduced Exhibit C, the draft rule, into the record and asked Ms. Lynn West to comment on the rule.

Ms. West said that the Federal Energy Policy Act of 2005, Public Law 109-58, that became effective August 8, 2005, contains some additional requirements for underground storage tanks. However, the guidance was issued on November 15, 2006, and additional time will be required to determine if additional changes are needed in the rule. Ms. West asked that the hearing be continued to the January 16, 2007 Solid Waste Management Board meeting, 1:30 p.m., in the Indiana Government Center South, Conference Center Room A, 402 West Washington Street, Indianapolis, Indiana.

Mr. Ward asked Ms. West for a short summary of what the guidance contained and specifically of the potential of losing federal funding. Ms. West replied that many details still need additional Environmental Protection Agency (EPA) consideration, but the guidance does mention that States have to comply with guidelines and the law. (Please see pages 51 through 54 of the official transcript of this meeting for a verbatim account of Ms. West's remarks.)

There were two commentators; Mr. Monti Harris, OES, and Mr. Scott Imus, Indiana Petroleum Marketers and Convenience Store Association (IPCA).

Mr. Harris, OES, said that the increased costs of new regulations would increase the cost to any facility that uses petroleum based products. However, because the final adoption of this rule is being continued, Mr. Harris said he would defer specific comments for a later date. (Please see pages 53 and 54 of the official transcript of this meeting for a verbatim account of Mr. Harris's comments.)

Mr. Imus, IPCA, said other options were not being considered in the rulemaking, i.e., financial assurance from tank and pipe manufacturers and certification of tank installers. Secondary

containment wasn't the only approach. There has been "a "rush to rulemaking" and there had not been enough time for regulators to fully analyze EPA guidance. Mr. Imus was glad that the final adoption of the rule had been delayed. Mr. Imus also stated that the economic consequences of the proposed rules need to be more fully analyzed. He added that he thought that the EPA had stated they would recognize good faith efforts to comply and that States would not lose federal funds even if a February 8 deadline was not met. (Please see pages 54 through 58 of the official transcript of this meeting for a verbatim account of Mr. Imus's remarks.)

There were no more questions or comments or comments so Acting Chairperson Dyar continued the hearing to the January 16, 2007, Solid Waste Management Board meeting, to be held in the Indiana Government Center South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, 1:30 p.m.

7. PRELIMINARY ADOPTION NEW RULES CONCERNING MERCURY SWITCHES

Acting Chairperson Dyar announced the public hearing to consider preliminary adoption of #05-250, New Rules Concerning Mercury Switches. He introduced Exhibit D, the draft rule, into the record and asked Mr. Steve Mojonniier to comment on the rule.

Mr. Mojonniier said that this rulemaking adds 329 IAC 11.5 for removal of mercury switches from end-of-life vehicles as required by House Enrolled Act 1110, Public Law 170-2006. Standards and procedures for payments to motor vehicle recyclers and the amounts of payments are established. Payments amounts for the switches are established and procedures for auto recyclers to claim and receive payments are established. Mr. Mojonniier explained that when the mercury switches are contained in a vehicle, they aren't a threat to human health and the environment. However, when a vehicle is recycled, mercury from these switches can be released into the air and water. Motor vehicle recyclers, (i.e., salvage, auto scrap yards, etc.) are required to remove mercury switches from motor vehicles before they are processed. Manufacturers of motor vehicles that contained mercury switches offered for sale in Indiana must develop and implement a plan to remove, collect and recycle the mercury switches. Mr. Mojonniier recommended preliminary adoption of the rule as presented in Exhibit D. (Please see pages 58 through 60 of the official transcript of this meeting for a verbatim account of Mr. Mojonniier's remarks.)

Acting Chairperson Dyar asked for questions from the Board. Mr. Himes asked about the source of funds for payment to auto recyclers. Mr. Mojonniier replied that payments will come from the Solid Waste Management Fund.

There were two commentors for this rule; Robert Snodgrass, LFR, Inc., Indianapolis, Indiana, representing Common Source Corporation and Capital City Metals, LLC, and Miriam Dant, Baker and Daniels, representing Nucor Steel and Steel Dynamics.

Mr. Snodgrass first commented that until comment has been received on the auto manufacturers plan, this rulemaking should not go forward. He also asked that certain recordkeeping and reporting requirements be removed because there is no statutory requirement and that both written and electronic submission of information should not be required -- one or the other, not both. Further consideration should be given to crushed vehicles that are flattened, making it impossible or impractical to remove switches. Mr. Snodgrass said that statute exempts these vehicles from the requirements. Mr. Snodgrass also asked for changes in the expiration of the regulations, and wants to require the auto manufacturers to supply the containers. He also asked for specific information on the level of funding that will be available. Mr. Snodgrass responded to questions about what type of damage would cause a vehicle to be exempt from having the switches removed. He also responded to a question that his comments had been faxed to IDEM during the comment period but to an incorrect number. E-mail comments are not currently accepted. (Please see pages 61 through 66 of the official transcript of this meeting for a verbatim account of Mr. Snodgrass's remarks.)

Ms. Dant spoke next. She spoke in support of the rule. (Please see pages 70 and 71 of the official transcript of this meeting for a verbatim account of Ms. Dant's comments.)

There were no more commenters or questions from the Board. The hearing was concluded. Acting Chairperson Dyar asked for a motion to preliminarily adopt the rule. Mr. Ward so moved and Dr. Tedesco seconded. The motion passed unanimously.

8. Acting Chairperson Dyar then opened the floor to hear from the public on topics of interest and potential rulemaking in Title 329. There were no commentors.
9. ADJOURNMENT
Acting Chairperson Dyar adjourned the meeting at 3:20 p.m.

The next meeting will be January 16, 2007, at 1:30 p.m., at the Indiana Government Center South, Conference Center Room A, 402 West Washington Street, Indianapolis, Indiana.

Acting Chairperson Dyar